



Zoning Enforcement Officer

TOWN OF ACTON
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INTERDEPARTMENTAL COMMUNICATION

To: Chairman & Members of the Board
Zoning Board of Appeals
Date: January 26, 2015

From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner

Subject: Special Permit #15-03
Zoning Bylaw Section 8.1 – Nonconforming Lots
Construction of Addition on Nonconforming Lot in Excess of 15% (§8.1.5)

Location: 172 Newtown Road, Acton, MA 01720
Petitioner: Robert Guy Dixon, 12 Johnson Road, Winchester, MA 01890
Owner: Nicholas Lee Rich & Stephen Bertolami, 172 Newtown Road, Acton, MA 01720
Engineer: Stamski & McNary, Inc., 1000 Main Street, Acton, MA 01720
Zoning: Residence 10/8 (R-10/8)
Groundwater Protection District Zones 3& 4
FAR Requirements: Existing Dwelling: 4,066 ft² (Based on information obtained from the Town of Acton's Assessor's Office)
15% Permitted by-right: 610 ft²
Total Proposed Square Feet of New Construction: 1,822 ft²
Proposed Use: Single Family Residential Dwelling
Registry of Deeds: Deed Book – 32845; Page – 573
Plan Reference: Plan No. 560 of 1991
Map/Parcel: D3-9-1
Hearing Date: February 2, 2015
Decision Due: May 3, 2015

Introduction:

The petitioner, Mr. Robert Guy Dixon, on behalf of the property owner's Nicholas Lee Rich and Stephen Bertolami, is requesting a Special Permit under Section 8.1.5 of the Town of Acton's Zoning Bylaw in order to allow for the construction and expansion of an existing single family residential dwelling located on a non-conforming lot. The overall proposed new square footage is 1,822 square feet, which is in excess of the 15% permitted as-of-right under Section 8.1.4 of the Zoning Bylaw. The subject property is classified and determined to be a nonconforming lot due to insufficient lot area. As per the Town of Acton Assessor's Office information, the existing structure was constructed in 1992.

According to the field card for the subject property which was obtained from the Town of Acton's Assessor's Office, there is a full height basement located under the existing residential structure. However, it is not indicated on the plans currently submitted as part of this application as to whether or not there is a basement

proposed under the new addition. The new proposed addition may perhaps consist of just a slab-on-grade design, however, it is something which the petitioner should clarify during the hearing.

It is also unclear from the drawings currently submitted as to what the overall height of the proposed addition will be. The height of the structure shall be measured from grade to the top/highest point of the decorative cupola with finial. The existing structure is a 2-story building, while the proposed addition consists of a single story, which could reasonable produce a conclusion that the maximum permitted height could be complied with, but again, is something which the petitioner should clarify during the hearing.

The Planning Department has no objection to the issuance and granting of the requested Special permit.

Relevant zoning information for the subject site/property is summarized in the following table:

By-Law Requirements	Required	Existing	Proposed
Min. Lot Area (ft ²) *	100,000 ft ²	82,828 ft ² *	82,828 ft ² *
Min. Lot Frontage (ft)	250'-0"	325'-10"	325'-10"
Min. Front Yard (ft) – Arlington	45'-0"	138'-2"	138'-2"
Min. Front Yard (ft) – Newtown	45'-0"	89'-5"	45'-6"
Min. Side/Rear Yard (ft) – West	20'-0"	257'-3"	257'-3"
Min. Side/Rear Yard (ft) – South	20'-0"	423'-9"	423'-9"
Max. Building Height (ft)	36'-0"	Unknown (< 36'-0")	Unknown (< 36'-0") **

* Due to the subject property only having 82,828 ft² of total overall Lot Area, the Lot is therefore nonconforming.

** It is unclear from the architectural plans submitted for review what the actual height of either the existing dwelling or the height of the new addition currently is and or will be. The existing home is a 2 story structure while the proposed addition is only one (1) story in height. It is reasonable to conclude that the new proposed addition would not exceed the 36'-0" maximum height limitation.

	Existing	15%	Proposed	Additional
Gross F.A.R. (Floor Area Ratio) as of April 1, 2012	4,066 ft ² *	610 ft ² **	1,822 ft ² ***	1,212 ft ² ****

* This number is based upon information obtained from the Town of Acton's Assessor's Office and the field card. It is a best estimation of the actual gross square footage of the existing structure. Due to the Lot being nonconforming, this is the number which reflects the existing gross square footage of the dwelling which was in existence as of April 1, 2012 as required under Zoning Bylaw Section 8.1.4.

The project architect has indicated that the existing structure has a gross floor area of 3,787 square feet, yet it is unclear from the drawings submitted as to how this number was calculated.

** Based upon the requirements set forth in Section 8.1.4 of the Zoning Bylaw, this would signify the maximum amount of square footage permitted to be built through the administrative approval of a building permit. This number is a function of the overall existing gross floor area as indicated on the Town of Acton's Assessor's Office field card.

Based upon the project architect's gross FAR provided on the plans, it is indicated that the 15% maximum by-right square footage would be 568 square feet.

- *** This number is a cumulative total of all of the proposed new construction which must be counted under Section 8.1.4 of the Zoning Bylaw. The new proposed addition consists of a sunroom (411 ft²), a breezeway (52 ft²) and a 3-car garage (918 ft²). However, the existing 2-car garage (441 ft²) is proposed to be converted into a Great Room and will become interior habitable living space which must be counted in the overall square footage.
- **** This is the difference in square footage proposed above and beyond the 15% maximum permitted by right.

Applicable Town of Acton Zoning Bylaw Sections:

- 5.2.7.1 Height in Feet, STRUCTURES – Height in feet shall be the vertical distance measured from the mean of the finished ground level adjoining the entire STRUCTURE to the highest extension of any part of the STRUCTURE.
- 5.2.7.2 Height in Feet, BUILDINGS – Height in feet shall be the vertical distance measured from the mean of the finished ground level adjoining the entire BUILDING at each exterior wall to the top of the highest roof beams of a flat roof or to the mean level of the highest gable or slope of a hip roof.
- 5.3.5.1 In all districts appurtenant STRUCTURES located upon the roof of a BUILDING may extend above the height limit but in no case shall they exceed 45 feet in height when combined with the height of the BUILDING nor in the aggregate occupy more than 20% of the roof plan area unless in compliance with Section 5.3.5.2 of this Bylaw.
- 8.1.4 Extensions, alterations or changes of Single- and Two-Family Dwellings on Nonconforming Lots – One or more extensions, alterations or changes to a single or two-family residential STRUCTURE on a nonconforming LOT shall be deemed not to increase any nonconformity and shall not require special permits under Section 8.1.5, provided that such extensions, alterations or changes comply with all applicable yard requirements and in total do not increase the size of the STRUCTURE by more than 15 percent of the GROSS FLOOR AREA in existence on April 1, 2012 or the date that LOT became nonconforming, whichever is later.
- 8.1.5 In all other cases, the Board of Appeals may, by special permit, allow such reconstruction of, or extension, alteration or change to a single or two-family residential STRUCTURE on a nonconforming LOT, where it determines either that the proposed modification does not increase the nonconformity or, if the proposed modification does increase the nonconformity, it will not be substantially more detrimental to the neighborhood than the existing STRUCTURE on the nonconforming LOT.